

Neutral Citation No. - 2024:AHC:94201-DB

**A.F.R.**

Judgement reserved on 08.04.2024

Judgement delivered on 24.05.2024

**Case :-** SPECIAL APPEAL No. - 345 of 2024

**Appellant :-** Ram Pratap Singh

**Respondent :-** Union of India and 4 others

**Counsel for Appellant :-** Avneesh Tripathi

**Counsel for Respondent :-** A.S.G.I.,Rohan Gupta

**Hon'ble Mahesh Chandra Tripathi,J.**

**Hon'ble Anish Kumar Gupta,J.**

(Per : Mahesh Chandra Tripathi, J.)

1. Heard Sri Avneesh Tripathi, learned counsel for the appellant-petitioner and Sri Rohan Gupta, learned counsel for the opposite party nos.2 to 4.

2. Present Special Appeal has arisen from a judgment and order of the learned Single Judge dated 11<sup>th</sup> March, 2024 passed in Writ A No.19126 of 2023 (Ram Pratap Singh and another vs. Union of India and 3 others) by which the writ petition filed by the appellant-petitioner has been dismissed.

### **FACTS**

3. The facts giving rise to this appeal in a nutshell are that the Indian Institute of Technology, Kanpur<sup>1</sup> is an engineering institute. Initially, it was a society and subsequently, it was incorporated by the Central Government under the Institutes of Technology Act, 1961<sup>2</sup>. Initially, the appellant-petitioner was appointed as a Junior Engineer (Trainee) in the pay scale of Rs.1400-2600 in IIT-Kanpur on April 27, 1988 on temporary and adhoc basis for a period of two years from the date of his joining and the said period was extended for a further period of six months vide Office order dated 10.05.1990. Subsequently, his pay scale of Rs.1400-2600 was changed to Rs.5000-8000/-. In January, 1991 the IIT-Kanpur had published an advertisement for appointment on the post of Junior Engineer and finally, the appellant was selected on the said post.

4. Thereafter, the appellant applied against the advertisement No.2/2005 and he was duly selected on the post of Assistant Engineer (Civil) on regular basis with effect from 14.12.2005 (F/N) or the date of

<sup>1</sup> IIT- Kanpur

<sup>2</sup> IT Act ,1961

assumption of charge on the position of Assistant Engineer (Civil), whichever is later. He was accorded the first financial upgradation in the Grade Pay of Rs.4600/- vide Office Order dated 08.05.2014 and later on was promoted to the post of Senior Assistant Engineer (SG) in the pay scale of Rs.33100-187800 Level-9 with Grade Pay of Rs.5400/-, with effect from 01.01.2018, vide Office Order dated 30.01.2019. The pay scale of Rs.33,100-1,87,800/- was the same pay scale as given to the promoted Senior Assistant Engineer/Assistant Engineer.

5. Meanwhile, the Board of Directors in its 227<sup>th</sup> meeting dated 11.10.2018 had approved the Recruitment and Promotion Rules in respect of non-academic staff. The IIT Kanpur decided to adopt and implement the Recruitment and Promotion Rules as per procedures approved by the Board. Thereafter, the promotion policy was notified vide Office Order dated 27.11.2018. The appellant claims that his right to promotion got affected by the new policy and as such, he represented the matter before the IIT Kanpur on 14.06.2019. The same was examined by the Institute Level Grievance Redressal Committee and the Board-Sub Committee, constituted for grievance examinations, wherein it was found that there is no merit in the claim set up by the appellant and he was advised to apply for the promotion as and when the post is advertised, subject to meeting the eligibility criteria. Therefore, the Board of Governors in its 244<sup>th</sup> meeting dated 12<sup>th</sup> January, 2022 had refused to accept his request and the same was communicated to him vide letter dated 28.02.2022 issued by the Deputy Registrar (Admin.) of IIT Kanpur.

6. It is claimed that the appellant possessed all the essential qualifications required for being considered for appointment on the post of Executive Engineer. It transpires that in the earlier advertisement dated 25.05.2015 at serial no.3 the posts of Executive Engineer (Electrical) (reserved for OBCs) & Air-conditioning (UR) were mentioned and the applications were invited from the Assistant Executive Engineer with 5 years service in the grade; or Graduate Assistant Engineers with 8 years service in the grade or Diploma holders Assistant Engineers with outstanding records & ability and 10 years service in the grade. Thereafter, the IIT Kanpur had published an advertisement no.1/2023

dated 16.9.2023 inviting applications for recruitment on various posts including five posts of Executive Engineer, wherein the essential qualification for the post of Executive Engineer were changed and now the qualification was added that the applicants holding the rank of Assistant Executive Engineer at Level-10 would alone be eligible for the recruitment.

7. The appellant and other similarly situated employees represented the matter before IIT Kanpur on 25.9.2023. Consequently, a corrigendum was issued on 20.9.2023 whereby the recruitment process for the post of Executive Engineer was kept in abeyance. Meanwhile, the Director of IIT Kanpur had retired from service and the charge of the Director was given to Senior-most Professor, who is now acting as Officiating Director. He had published the advertisement dated 04.09.2023 for various posts including five posts of Executive Engineer at serial no.18, wherein the incumbents were required to possess the essential qualifications, (i) Master's Degree in Civil Engineering from a recognized University/Institute with at least 55% in the qualifying degree; (ii) At least eight years relevant experience out of which at least three years of regular clear service at Assistant Executive Engineer level or equivalent (Level 10, 7<sup>th</sup> CPC) OR (i) A first-class degree in Civil Engineering from a recognized University/Institute; (ii) At least ten years relevant experience out of which at least 5 years of regular clear service at Assistant Executive Engineer level or equivalent (Level 10, 7<sup>th</sup> CPC).

8. Aggrieved with the aforesaid advertisement, the appellant had filed Writ A No.19126 of 2023 praying for the following reliefs:-

"i) to issue a writ, order or direction in the nature of certiorari quashing the advertisement dated 04.09.2023 bearing Advertisement No.1/23 issued by the Recruitment Section of the respondent no.2 in so far as it relates to the selection on the post of Executive Engineer at Serial No.18 (Annexure-1 to the instant writ petition);

ii) to issue a writ, order or direction in the nature of mandamus directing respondent No.2 to allow the petitioner to participate in the recruitment process.

(iii) to issue any other suitable writ, order or direction which the Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

(iv) to award costs of this petition to the petitioner."

9. The learned Single Judge after extensively considering the

pleadings; submissions of the parties and the import of judgement & order passed by Hon'ble Supreme Court in the case of **Dr. Thingujam Achouba Singh and Others v. Dr. H.N.Nabachandra Singh and Others**<sup>3</sup>, proceeded to dismiss the writ petition vide order dated 11.3.2024, which is under challenge in the present Special Appeal.

**SUBMISSION ON BEHALF OF THE APPELLANT**

10. Sri Avneesh Tripathi, learned counsel for the appellant vehemently argued that the impugned judgement and order dated 11.3.2024, passed by the learned Single Judge suffers from manifest error of law and accordingly, the same is liable to be set aside. He submitted that the appellant had approached to this Court and asked for the relief to participate in the selection process and not for promotion on the post in question. The petitioner-appellant had also questioned the propriety and legality of the conditions imposed in the impugned advertisement and submitted that the impugned advertisement is made just to preclude the appellant from appearing in the direct recruitment for the post of Executive Engineer. He submitted that learned Single Judge has failed to appreciate the controversy in hand. Even though the issues were framed in paragraph 12 of the judgement but the same were contrary to the assertions made in the writ petition and in particular, the reliefs, which were sought in the writ petition. Learned Single Judge has also failed to appreciate the core issue of arbitrariness of the Board of Governors while putting the conditions in the advertisement, which were nowhere prescribed in any other IITs. He submitted that learned Single Judge has heavily relied upon the fact that the petitioner had not questioned the power of the Board of Directors in adherence to which the impugned conditions of the advertisement were prescribed. He submitted that the impugned order on this score is also unsustainable as the specific pleading has been set up by the petitioner in paragraph Nos.18, 25, 36, 37, 41 & 42 of the writ petition.

11. It was further argued by Sri Tripathi that the order impugned is also unsustainable as the learned Single Judge has expressed an opinion that in absence of challenge being made to the Recruitment & Promotion Rules,

---

<sup>3</sup> (2020) 20 SCC 312

2018 of IIT Kanpur<sup>4</sup> and also without challenge to the resolution of the Board of Governors dated 23.12.2022, no relief can be accorded to the petitioner. He submitted that in fact, Rules, 2018 would have no bearing or relevance as the same do not talk about the post in question i.e. Executive Engineer. Neither, the same has prescribed the qualification for the post in question nor the resolution of the Board of Governors prescribes as such, and for the first time, the alleged Rules, 2018 had been brought on record alongwith the counter affidavit with an endorsement as confidential document and the same was not available in public domain. Therefore, in absence of relevant resolution available in public domain, the same could not be challenged by the applicant. Moreover, in most arbitrary manner the qualifications were imposed through the advertisement in question.

12. Sri Avneesh Tripathi vehemently submitted that learned Single Judge had taken note of Section 33 (2) (b) of the IT Act, 1961 which provides to lay down the policy regarding cadres, methods of recruitment and conditions of service of employees but in most arbitrary manner, learned Single Judge has failed to appreciate that the Board of Governors prescribed qualifications in the impugned advertisement without any authority. He had also stated that in most arbitrary manner, the Board of Governors had taken note of resolution of the IIT Council dated 19.10.2009, wherein it is manifestly clear that no such power inheres the Board of Governors to determine the service conditions, rather it is only limited to creation of new posts. Learned Single Judge had also utterly failed to take note of this very submission that the impugned conditions were imposed in such arbitrary manner solely for the reason that the rightful claim of the petitioner appellant could be denied. The precise observation of learned Single Judge to the extent, that in absence of any challenge to the Rules or resolution passed by the Board of Governors, no relief could be accorded to the petitioner, is also misconceived as the said document had been placed by the IIT Kanpur alongwith counter affidavit with a note that the said document is confidential and the same is not in public domain.

---

4 Rules, 2018

**SUBMISSION ON BEHALF OF RESPONDENTS**

13. Replying to the aforesaid submission made by the learned counsel representing the appellant-petitioner, Shri Rohan Gupta, learned counsel for the IIT Kanpur has strenuously argued that the appellant is working as Senior Assistant Engineer (Special Grade), which is Level-9 post and he cannot be promoted to the post of Executive Engineer, which is a Level-11 post. Admittedly, the age of the appellant is 59 years while the maximum age in the advertisement was given as 55 years, therefore the appellant is not eligible for direct recruitment. The advertisement in question further prescribes the essential qualifications as determined by the Board of Governors of the IIT-Kanpur in the meeting dated 11.12.2022. Both the prescriptions i.e. age as 55 years, and the eligibility criteria as laid down by the Board, had not been assailed in the writ petition. He has placed reliance on the judgement in the case of **Dr. Thingujam Achouba Singh and others vs. Dr. H. Nabachandra Singh and others**<sup>5</sup>, in which it was held that in absence of challenge to the Rules laying down the eligibility criteria, the consequential advertisement could not be challenged.

14. Sri Rohan Gupta further submitted that the Writ Court has proceeded to decide the matter on the basis of the fact that Rule 6 of the Rules, 2018 clearly provides that the direct recruitment would generally be done at the entry level posts and it also prescribes the eligibility criteria for the entry level posts. The post of Executive Engineer is, therefore, a promotional post. Rule 6 itself further provides that lateral entry of external candidates may sometimes be permitted by the Board for special needs. Rules, 2018 do not prescribe the eligibility criteria for the post of Executive Engineer. However, the Board has the powers to permit lateral entry and has done so in its meeting dated 11.12.2022. Rule 6 of the Rules, 2018 empowers the Board to permit lateral entry of external candidates even on the post of Executive Engineer, which is to be normally filled up by promotion. It was essential for the petitioner to have challenged the Rules, 2018 and the resolution of the Board of Governors dated 11.12.2022 prescribing the essential qualifications for the post of

---

5 (2020) 20 SCC 312



Executive Engineer and as such, any claim, in absence of challenge, is not tenable in the eyes of law.

15. It was further submitted that the petitioner has not challenged the eligibility criteria as prescribed by the Board and therefore, this question was not considered by the Writ Court. The petitioner had set up his claim in the writ petition that the CPWD Rules for direct recruitment would apply to IIT Kanpur and the ground qua the competence of the Board to frame the rules was only taken in the rejoinder affidavit without moving any amendment application to challenge the Rules or the Resolution of the Board dated 11.12.2022. The IIT Council is a separate entity and it was not made a party in the writ petition and as such, the Union of India could not clarify the stand of the IIT Council.

16. We have carefully considered the rival submissions placed by the learned counsels representing the respective parties at the bar and perused the record.

#### **FINDINGS OF THE LEARNED SINGLE JUDGE**

17. Learned Single Judge after noticing the arguments advanced on behalf of the parties formulated three categorical points and issues to be addressed namely (a) whether Board of Governors, IIT Kanpur is justified in adopting resolution dated 23rd December, 2022 to hold direct recruitment drive in respect of 5 posts of Executive Engineer to the disadvantage of the petitioners, who claim departmental promotion; (b) whether in absence of any challenge to the rules taking aid of which resolution dated 23rd December, 2022 has been adopted and whether in the absence of challenge to the resolution, the same can be held bad; and (c) whether five posts of Executive Engineer advertised by respondents do fall under promotion quota.

18. Learned Single Judge in his wisdom had taken the first and second points together as both were interrelated. Firstly, he had considered whether there is an authority vested under the rules with the Board of Governors, whether challenge or no challenge, the resolution will be valid and conversely if the Court finds there to be no such power under the rules vested with Board of Governors, the resolution would get rendered

null and void and the Court even in the absence of any challenge hold that to be so and consequential action even if not under challenge would become bad and can be struck down. Learned Single Judge had considered the petitioner's argument to the effect that there lies no such power with Board of Governors and during the argument, the Advocates appearing for the respective parties do agree that the Rules, 2018, which were adopted by modifying earlier Rules, 2013, notified on 27th November, 2018 were the rules in existence and they had also accepted that these rules came to be further modified and notified on 28th May, 2021, which had been brought on record alongwith counter affidavit filed by the respondents.

19. Learned Single Judge has also taken into consideration the objection of the petitioner that the Board of Governors is responsible only for general superintendence and control qua affairs of the institute but is not vested with the powers to formulate or approve rules and regulations for recruitment and laying down accordingly eligibility criteria etc. for selection and appointment upon faculty and non-faculty positions in the institute. The objection, which was taken in the rejoinder to the extent that Recruitment and Career Progression Scheme, which was floated by the IIT Council, the top composite body for different IITs, way back in the year 1999, would prevail as this authority is superior to the Board. Learned Single Judge has considered Section 33 (2) (b) of the IT Act, 1961 and accepted that Section 33 (2) (b) provides for laying down policy regarding cadres, methods of recruitment and conditions of service of employees etc. The learned Single Judge had also considered the relevant question qua the legal position, if there are no such policies laid down. Section 33 of the IT Act, 1961 is reproduced hereunder:-

“33. (1) It shall be the general duty of the Council to co- ordinate the activities of all the Institutes.

(2) Without prejudice to the provisions of sub. section (1), the Council shall perform the following functions, namely: -

a) to advise on matters relating to the duration of the courses, the degrees and other academic distinctions to be conferred by the Institutes, admission standards and other academic matters;

**b) to lay down policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and freeships, levying of fees and other matters of common interest;**

c) to examine the development plans of each Institute and to approve such of



them as are considered necessary and also to indicate broadly the financial implications of such approved plans;

d) to examine the annual budget estimates of each Institute and to recommend to the Central Government the allocation of funds for that purpose;

e) to advise the Visitor, if so required, in respect of any function to be performed by him under this Act; and

f) to perform such other functions as are assigned to it by or under this Act.”

(emphasis supplied)

20. For considering the aforesaid provisions learned Single Judge has considered Sections 10, 11 and 13 of the IT Act, 1961, which are reproduced hereunder:-

“10. The following shall be the authorities of an Institute,

a) a Board of Governors;

b) a Senate; and

c) Such other authorities as may be declared by the Statutes to be the authorities of the Institute.

11. The Board of an Institute shall consist of the following persons, namely:-

a) the Chairman, to be nominated by the Visitor;

b) the Director, ex officio,

(c) one person to be nominated by the Government of each of the States comprising the zone in which the Institute is situated, from among persons who, in the opinion of that Government, are technologists or industrialists of repute;

(d) four persons having special knowledge or practical experience in respect of education, engineering or science, to be nominated by the Council; and

(e) two professors of the Institute, to be nominated by the Senate.

Explanation:- In this section, the expression "zone" means a zone as for the time being demarcated by the All-India Council for Technical Education for the purposes of this Act

13. (1) Subject to the provisions of this Act, the Board of any Institute shall be responsible for the general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers of the Institute not otherwise provided for by this Act, the Statutes and the Ordinances, and shall have the power to review the acts of the Senate.

(2) Without prejudice to the provisions of sub- section (1), the Board of any Institute shall-

(a) take decisions on questions of policy relating to the administration and working of the Institute;

(b) institute courses of study at the Institute;

(c) make Statutes;

(d) institute and appoint persons to academic as well as other posts in the Institute;

(e) consider and modify or cancel Ordinances;

(f) consider and pass resolutions on the annual report, the annual accounts and the budget estimates of the Institute for the next financial year as it thinks fit and submit them to the Council together with a statement of its developments plans;

(g) exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

(3) The Board shall have the power to appoint such committees as it considers necessary for the exercise of its powers and the performance of its duties under this Act.”

21. As far as the submission of the counsel for the appellant-petitioner that the power of the Board of Governors is limited , we are in consonance with the view taken by the Learned Single Judge, as the Sections 25, 26 and 27 of the IT Act 1962 explicitly lays down the power of the Board which are reproduced hereunder:-

**" 25 - Appointments**

All appointment on the staff of any Institute, except that of the Director, shall be made in accordance with the procedure laid down in the Statutes, by----

(a) the Board, if the appointment is made on the academic staff in the post of Lecturer or above or if the appointment is made on the non-academic staff in any cadre the maximum of the pay-scale for which exceeds six hundred rupees per month;

(b) by the Director, in any other case."

**" 26 - Statutes**

Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:---

.....

(e) the term of office and the method of appointment of officers of the Institute;

(f) the qualifications of teacher of the Institute;

(g) the classification, the method of appointment and the determinations of the terms and conditions of service of, teachers and other staff of the Institute;

(h) the constitution of pension, insurance and provident funds for the benefit of the officers, teachers and other staff of the Institute;

(I) the constitution, powers and duties of the authorities of the Institute;

...”

**" 27 - Statutes how made**

(1) The first Statutes of each Institute shall be framed by the Council with the previous approval of the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.

(2) The Board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereafter in this section provided.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may assent thereto or withhold assent or remit it to the Board or consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor."

22. Heavy reliance has also been placed by learned counsel for the

appellant-petitioner before learned Single Judge that All India Council for Technical Education has the general powers over and above the Institutes of Technology and the IT Act, 1961 does vest power in the IITs to inform Ministry of Human Resources and Development to create post by virtue of delegated power. Executing this power a resolution, as adopted by All India Council at item no. 40.4, was placed before the Board on 19th October, 2009, wherein it was decided that flexibility would be given to the IITs for creation of posts. IITs may be delegated the power to create posts subject to the ratio of 10:1.1.1 between students, faculty and non-faculty. However, the IITs would be required to inform the Ministry while creating the posts under these delegated powers. This aspect of the matter has also been considered by the learned Single Judge. The relevant paras 21, 22 and 23 of the judgement is extracted below:-

“21. According to aforesaid provisions, residuary power lies with Board, which is not provided elsewhere. The first statute and ordinances have to be framed vide Section 6(1) of the IT Act, 1961 and that power lies with both the Board and the Council both. Section 38-(c) provides that so long as statutes and ordinances are not framed for each of the institutes of colleges, the statute and ordinance of the Indian Institute of Technology, Kharagpur will prevail.

22. In total circumspect of the provisions as discussed above, it is clear that either rules are framed by the council as Apex Body on all India basis or Board for the IIT Kanpur, the provisions of the IIT Kharagpur provide for such conditions to which Rule 6 of the recruitment and promotion rules can be said to be repugnant, the rules as framed by the Board of Governors exercising power under Section 13(1) would prevail. 13(2)-c also empower the Board to frame statutes, therefore, taking recourse to the harmonious constructions of the provisions as contained under Section 13(1) and 13(2) c and 33(1) (b) and 38-(C) of the IT Act, 1961, it can safely be concluded that Board of Governors being Apex Body of the IIT Kanpur under the Act, 1961 is fully empowered to frame recruitment and promotions rules and since it has framed such rules right from 2013 onwards as amended Rules 2021, such rules are held to be valid.

23. As the argument has been advanced that All India Council has the general powers over and above institutes of Technology and the Act, 1961 does vest power in the IITs to inform Ministry of Human Resources and Development to create post by virtue of delegated power, executing this power a resolution as adopted by All India Council as item no. 40.4 placed before the Board date 19th October, 2009 is reproduced hereunder: “Item No. 40.4: Autonomy of the Institutes - financial, functional and managerial:

The issue of autonomy is closely linked with the capacity of the institutions to raise their own resources. In order to suggest ways and means of achieving more autonomy, it was decided to constitute a Committee comprising Dr. Anil Kakodkar, Chairman, BoG, IIT Bombay and four other members to be nominated by the Chairman to suggest a roadmap for the autonomy and future of the IITs. The Committee would inter alia examine the issue of increase in fees by the IITS in a gradual manner. While doing so, the interest of weaker sections of society i.e. SCs/STs/OBCs would be taken care of. It should be ensured that any student entering the IIT system should be able to avail educational loan and the same must be facilitated by the Institutes. The Committee could suggest an interest loan waiver scheme for students who

continue to do research and take up teaching assignments. In fact a portion of the loan could be even considered for being written off for every year of teaching in a publicly funded institution in such a way that the entire loan could be written off if one has served in publicly funded institutions for more than 30 years or so. Any person who does Ph.D. must be supported. The Non Plan grants to be given to the IITs, which are in the process of being raised through the Block Grant scheme, should be linked to the actual students' strength. The ratio of B.Tech.

Post Graduate and Research students in the Institutes should be maintained at optimum levels, while affecting increase in students' strength. The Institutes should be entitled for matching grants from the Government in case they generate more resources through research projects from the industry, consultancy, donations from alumni and others etc. All these issues will be examined by the above Committee which will submit its report within 4 months and will also follow up on the implementation of its recommendations.

**It was also decided that flexibility would be given to the IITs for creation of posts. ITs may be delegated the power to create posts subject to the ratio of 10:1:1.1 between students, faculty and non-faculty. However the ITs would be required to inform the Ministry while creating the posts under these delegated powers. Addl. Secretary (MHRD) was asked to get this processed for issue of appropriate orders in this regard, after obtaining the approval of the Ministry of Finance.**

The Directors of IIts expressed that there was a need for more laboratory staff. AS & FA stated that clarifications have been issued to the ITs that requirement of increased number of technical staff due to OSC expansion only could be allowed even if the ratio exceeds the norms of 1:1.1 between faculty to non-faculty staff.

It was also clarified that for the purpose of new cars for the Directors of new ITs, the BoG of the concerned Institute was competent to approve.

It was also decided that every IIT would present its vision document at the Retreat proposed in January, 2010.”

(emphasis supplied)

23. Learned Single Judge has considered the objection of the counsel for IIT, Kanpur that the Rules do not provide the post of Superintending Engineer and in such situation the resolution was adopted by the Board of Governors to create a post as required as the Board inheres the residuary powers and in view of the provisions contained under Section 2 (b) of Section 33 of IT Act, 1961, the Board had passed the resolution on 23.12.2022 and the resolution of the Board of Governors was a valid act within the ambit and scope of powers vested in it. Learned Single Judge has exhaustively considered the first and second issues and rejected the relief to the appellant-petitioner while answering the points (a) and (b). Learned Single Judge has also considered the additional ground, which was taken at the time of argument qua the question of consideration of age and had opined that even otherwise, prescribed qualification is a pure administrative policy decision of employer either by framing rules or otherwise by executing instructions to meet the requirements as per

suitability. Relevant paragraph nos.25, 26, 27, 28, 29, 30, 31 & 32 of the judgement are reproduced hereunder:-

“25. In view of above, in respect of both point nos. 1 and 2, I hold that Board of Governors of IIT Kanpur is justified in framing recruitment Rules 2018 as modified/ amended in 2021 and since Rule 6 of rules provides for powers for the direct recruitment even upon post falling in lateral entries (P-19) that includes post of Executive Engineer, the resolution adopted by it to make a direct recruitment upon such post dated 23rd December, 2022 is also valid. Besides the above, I also find that petitioners are not eligible for the post of Executive Engineer for the simple reason that they are not working as Assistant Executive Engineer.

26. So for the post of Executive Engineer is concerned, there should be no quarrel because Rules vide P-19 to the schedule make post of Executive Engineer at pay matrix level- 11 in the Group- A to be filled up by promotion only from Assistant Executive Engineer, pay matrix level 10 and the essential qualification under the advertisement is also three years of regular clear service at Assistant Executive Engineer, level- 10 or equivalent level. So essential qualification prescribed under the advertisement, rules are same.

27. Under the circumstances, therefore, petitioners cannot question the advertisement as far as post of Executive Engineer is concerned because they have nothing to put on stake, being not eligible even by way of promotion upon the posts in question. There is no prayer in the writ petition seeking promotion to the post of Assistant Executive Engineer, so no relief as such can be granted to promote them first as Assistant Executive Engineer if lying vacant then to direct to consider their claim for the post of Executive Engineer.

28. The question of consideration of age would have arisen had petitioners been working at pay matrix level-10 which is not a case in hand even otherwise prescribed qualification is a pure administrative policy decision of employer either by framing rules or otherwise by executing instructions to be meet requirements as per suitability required.

29. In my above view, I find support from paragraph 16 of the judgment of the Supreme Court in the case of Dr. Thingujam Achouba Singh and Others (Supra) Paragraph 16 runs as under:

“16. So far as relaxation of upper age-limit, as sought by the petitioners in one of the writ petitions is concerned, the High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

30. Admittedly, there is no challenge to the rules. The pleading in the writ petition are absolutely silent about validity of these rules. In fact these rules have though been not annexed with writ petition but a particular table has been annexed which is P-19, which is provided under the schedule of the recruitment and selection Rules 2018 amended in 2021. This table has been relied upon by the petitioner to take the plea that post in question is a promoted post.

31. In the rejoinder affidavit although plea has been taken vide paragraph 8 that IIT Council shall be laying down the rules of recruitment shall be providing for conditions of service as per Institutes of Technology Act, 1961, but neither any policy has been annexed or even referred to by the petitioner in the rejoinder affidavit, nor even recruitment and Career Progression Scheme as referred to in paragraph 8 of the rejoinder affidavit has been brought on record.

32. In the same judgment of Dr. Thingujam Achouba Singh and Others (Supra), the Court has held merely because rules are not in public domain notifying it, cannot itself be a ground to challenge and further if the rules are not challenged the Court will not embark upon an enquiry as to the validity of such rules. Vide paragraph 13 and 14, the Court has held thus:



“13. At the outset, it is to be noticed that though, in none of the writ petitions, Rules governing appointment to the post of Director was under challenge, the High Court has gone into the validity of the Rules, as amended, and held that amendments to the Rules were not carried out by following the Rules, Regulations and Bye-laws of the Society. The specific plea of the respondent authorities in the writ petitions, that there is no challenge to validity of the Rules but same has been brushed aside by the High Court by merely stating that such an objection is of technical nature. At this stage, it is relevant to note that such objection raised should not have been brushed aside by the High Court by holding that such objection is of a technical nature. In all these writ petitions in which common order [H. Nabachandra Singh v. Union of India, 2017 SCC OnLine Mani 52] is passed by the High Court, validity of advertisement dated 16-8-2016 alone was under challenge. We are of the view that the High Court has committed an error in going into the validity of the Rules, in absence of any challenge to the same. In any event, it was the case of the respondent authorities that the Rules governing appointment were amended by following the Rules and such amendment was also approved by the competent authority, of Ministry of Health & Family Welfare.

14. Further, the fact of not notifying the amended Rules has also been made basis for grant of relief by the High Court. In this regard, the High Court has held that not notifying the amended Rules would strike at the root of the amendment process of the recruitment rules, as such, unless such Rules are notified, the same cannot be enforced. It appears from the impugned order itself that it was the specific plea in the counter-affidavit filed before the High Court that the said Rules were not framed under Article 309 of the Constitution of India and further there is no specific provision in the Rules, Regulations and Bye-laws of RIMS for notifying the same. It is true that in a public institution, rules are required to be made available, but at the same time not notifying to public at large cannot be the ground to invalidate the notification, in the absence of any provision to that effect in the Bye-laws of the Society or the Rules and Regulations framed for recruitment to the post of Director.”

24. Learned Single Judge has also considered the third point whether these five posts of Executive Engineer would have fallen in promotion quota and rejected the same on the ground that since these are lateral positions and the Board of Governors is vested with the power to fill up within vacancies by direct recruitment.

#### **FINDINGS BY THE COURT**

25. The IIT Kanpur is a body corporate established under the IT Act, 1961 and declared as an institute of national importance to provide for education and research in various branches of Engineering, Technology, Science and Arts and also for advancement of learning and dissemination of knowledge in such branches. The governing body of the IIT Kanpur consists of a Chairman, a Director and other members of the Board of the institute. The Chairman of the Board is nominated by the Visitor (Hon'ble President of India) and the Director of the institute is appointed by the IIT Council with the prior approval of the Visitor. Section 13 of the IT Act, 1961 provides that the Board of the IIT Kanpur is responsible for the



general superintendence, direction and control of the affairs of the institute and is required to exercise all the powers of the institute not otherwise provided in the IT Act, 1961, the Statutes and the Ordinances. The Board is empowered to formulate, approve all rules or regulations for recruitment and/or to lay down the eligibility criteria for academic and non-academic staff of the institute. In view of Section 25 of the IT Act, 1961 the Board is the appointing authority for academic staff as well as for all non-academic staff in any cadre.

26. Considering the rival submissions, we find that the core issues before this court are:-

“(i) whether this Court may take a judicial review of the qualification prescribed by the employer for direct recruitment or for promotion and

(ii) whether in absence of serious challenge to the Rules/Regulations, which are duly adopted and enacted by the Competent Authority, the challenge to consequential recruitment process can be entertained by this Court.”

### **ISSUE NO.1**

27. The record reflects that the Board in its meeting dated 11.10.2018 had approved the Recruitment and Promotion Rules qua the non-academic staff of the IIT Kanpur. Consequently, the IIT Kanpur decided to adopt and implement the Recruitment and promotion Rules as per the procedures approved by the Board and constituted the Promotion Committee vide Office Order dated 27.11.2018. In IIT Kanpur Recruitment and Promotion Rules, all the non-teaching/non-academic posts in the institute are categorized into three groups (Group A, Group B and Group C). Under each group there will be a number of cadres, each cadre having a ladder with multiple levels of posts. The lowest post in a ladder will be called the entry post and the remaining posts within a ladder will be called selection posts. The direct recruitment will normally be done at the entry post in a ladder. However, in the interest of institute, lateral entry of external candidates may sometimes be permitted by Board for special needs under Groups A and B posts. The promotions of institute employees can be made on both the entry posts and selection posts. However, the promotion of institute employees to entry level posts will be vacancy based.

28. The aforesaid Rule was modified/amended by the Board in its 238<sup>th</sup> meeting dated 09.04.2021 in exercise of its powers conferred by Section 13 (1) & (2) of the IT Act, 1961. Thereafter the Board in its 251<sup>st</sup> meeting dated 11.12.2022 had also considered and approved the creation of a new designation for a Senior Engineer position namely Senior Superintending Engineer against the sanctioned Group 'A' Officers' positions and consequently approved the advertisement to fill up the 05 positions of Executive Engineer apart from other positions on mission mode recruitment drive on account of the urgent requirement of expansion of infrastructure in the institute. Suffice to indicate that the advertisement qua the Executive Engineer contained the same eligibility criteria, as has been duly approved by the Board in its 251<sup>st</sup> meeting dated 11.12.2022.

29. It is reflected from the record that the appellant was initially inducted as Junior Engineer (Trainee) w.e.f. 06.05.1988 to 05.11.1990 on contractual basis. Fresh recruitment drive was taken by the IIT Kanpur and in response thereof, the appellant got an appointment as Junior Engineer from 18.01.1991. Thereafter, on 01.07.2003 he was accorded the first promotion on the post of Assistant Engineer (Level-7 post). Later on he was also accorded the second promotion and became Senior Assistant Engineer on 01.01.2014 and continued till 31.12.2017. Thereafter, he got his third promotion on the post of Senior Assistant Engineer (Selection Grade) on 01.01.2018. Meanwhile, the Board of Governors, which is the Apex Body of IIT Kanpur, had adopted resolution, which was required to expedite the dedicated task of recruitment drive on a mission mode and under the IT Act, 1961 the consequential resolution was adopted by the Board of Governors on 23.12.2022. Accordingly, consequential advertisement was issued for direct recruitment on the various posts including the post of Senior Superintending Engineer, and the Executive Engineer, by prescribing essential qualifications, which falls under the domain of the employer and the recruiting authority to cater the most suitable candidate to accomplish the task.

30. The present matter relates to the premier institution of the country. The suitability for the job, for which the selection and appointment is to be made, is an area of technical experts of the field and generally the

Court does not inhere such expertise and skills to assess the exact suitability and eligibility vis-a-vis selection & appointment had to be made. Generally, the Court cannot embark upon any enquiry by way of judicial review to prescribe, which qualifications would be better qualification for the employer to provide as an essential qualification for the post upon which the selection and appointment has to be made.

31. Prescription of qualifications and other conditions of service pertains to the field of policy and is within the exclusive discretion and jurisdiction of the authority. It is not open to the Courts to direct the authority to have a particular method of recruitment or eligibility criteria. The Hon'ble Supreme Court in **P.U. Joshi vs. Accountant General**<sup>6</sup> had initially dealt with the issue in regard to the limitation of the courts in deciding the qualification for requirement on a post. The relevant is extracted hereunder;-

"8. .... The stand on behalf of the appellants private parties is that their service rights are to be governed by the rules relating to their service as on the date of bifurcation on 1.3.1984 and that the rules and the services conditions cannot be altered to their detriment by the subsequent rules. It is also contended that the appellants, working as Supervisors, are also performing duties that are discharged by the Assistant Accounts Officers and they would, therefore, be entitled to the scale of pay of Rs. 2000-3200 of A.A.Os. (earlier SG Supervisors) on the principle of 'equal pay for equal work'. The denial of promotional prospects to the category of Supervisors, like the appellants, is also challenged on the ground of arbitrariness and hostile discrimination. Lastly, it was contended that before bifurcation though it was assured that the pay structure for the Accounts and Entitlement offices would be the same as the one before bifurcation and the existing promotional prospects and selection grade will be applicable mutatis mutandis, it was not actually adhered to after bifurcation and for this reason also, relief as prayed for ought to be granted. "

While dealing with the aforesaid issue the court held,

"..... prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and is within the exclusive discretion and jurisdiction of the State and it is not for the Courts to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that on the State. It is also open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules

relating to even an existing service."

32. The same issue arose before the Hon'ble Apex Court in **Maharashtra Public Service Commission vs. Sandeep Shriram Warade**<sup>7</sup> in para no 3 of the judgement , which is extracted as below ;-

" 3 . Learned Counsel for the Appellants submitted that academic qualifications coupled with the requisite years of practical experience in the manufacturing and testing of drugs were essential qualifications for appointment. Research experience in a research and development laboratory was a desirable qualification which may have entitled such a person to a preference only. The latter experience could not be equated with and considered to be at par with the essential eligibility to be considered for appointment. The High Court erred in misreading the advertisement to redefine the desirable qualification as an essential qualification by itself."

33. The issue, which was arisen before Hon'ble Apex Court in **Maharashtra Public Service Commission vs. Sandeep Shriram Warade** (supra), has been answered in paragraph-9 of the judgement as under:-

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

34. Similar issue has been dealt with by the Hon'ble Apex Court in the case of **Chief Manager, Punjab National Bank vs. Anit Kumar**<sup>8</sup> where the Apex Court held:

"7.3. Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the

<sup>7</sup> (2019) 6 SCC 362

<sup>8</sup> (2021) 12 SCC 80

employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the Appellant Bank to allow the Respondent-original writ Petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement."

35. A Full Bench of this Court in **Deepak Singh Vs. State of U.P.**<sup>9</sup> has observed:-

"52. Now we proceed to deal with the reference in the case of Himani Singh v. State of U.P., the advertisement in question prescribed the qualification of Graduate in Commerce "O' level Diploma issued by any Government Recognised Institution. The petitioners were non-suited as they hold a Post-Graduate Diploma in Computer Application. Thus, the claim of the petitioners, before the learned Single Judge, was that their qualifications are superior to the prescribed qualification i.e. "O' level Diploma in Computer Application. In the said case, the Uttar Pradesh Subordinate Services Selection Commission, Lucknow had issued a Notification on 27.8.2018 notifying 13 that the "O' level Diploma in Computer Application had been specified as essential eligibility qualification and it further provided that there does not exist any Government Order specifying the equivalent of qualification with "O' level Diploma in Computer Operation and that National Institute of Electronics and Information Technology (hereinafter referred to "NIELIT"), earlier DOEAC Society had informed that apart from NIELIT no other institution was authorized to grant "O' level Certificate in Computer Operation. The learned Single Judge, in his judgement dated 04.12.2018, rejected the contention of the petitioners therein relying upon the earlier decision of the learned Single Judge in Civil Misc. Writ Petition No. 19687 of 2018 (Yogendra Singh Rana v. State of U.P.). While dismissing the said writ petition, learned Single Judge held that the assessment with regard to the suitability of the higher qualification with a higher proficiency in the field of Computer Operation is in the field of policy and would not justify interference by the Writ Court. Before the Special Appeal Court, the petitioners had argued that the judgement of the Yogendra Rana (supra) is subject matter of pending appeal in which interim order has also been passed. It was thus argued before the Special Appeal Court that in view of decision in the case of Jyoti K.K. (supra) and Parvez Ahmad Parry (supra), the matter requires to be considered by the larger Bench that is how the matter was referred vide order dated 15.2.2019.

36. A Division Bench of Delhi High Court in **Vincent Nirmala vs. Union of India & ors**<sup>10</sup>, came across the following question :

" Petitioner impugns condition at Serial No. 9 in Schedule I of the National Company Law Tribunal (Recruitment, Salary and other Terms and Conditions of Service of Officers and other Employees) Rules, 2020 (hereinafter referred to as the Rules), issued by Respondent No. 1, to the extent that they prescribe a degree in law as a qualification for an Assistant to be promoted to the post of Court Officer in Respondent No. 3, National Company Law Tribunal (hereinafter referred to as the NCLT)."

9. [2019 SCC Online ALL 4471 (FB)]

10 W.P. (C) 2742/2021 decided on July 03, 2023

The Division Bench while relying on the judgement passed by the Hon'ble Apex Court in **P.U. Joshi** held :

“ Supreme Court in **P.U. Joshi (supra)** has held that prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and is within the exclusive discretion and jurisdiction of the State and it is not for the Courts to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. It is also open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

37. In view of the aforementioned law as pronounced by the Apex Court, this Court proceeds to answer the point no.I as follows.

38. In the facts as enumerated in detail we do not find that the present matter is fit to take a judicial review of the qualification prescribed by the employer/IIT, Kanpur under direct recruitment.

#### **ISSUE NO.II**

39. It is reflected from the record that the maximum age prescribed for direct recruitment qua the post in question was 55 years, whereas admittedly, the appellant has crossed 59 years' age. Even on this score, the appellant is not eligible for direct recruitment for this reason alone. Other than the above criteria, the other essential qualification had also been determined by the Board of Governors of the IIT Kanpur in its 251<sup>st</sup> meeting held on December 11, 2022, (as is evident from page 299 and 301 of the paper book), wherein the Board had approved the creation of a new designation for a Senior Engineer position (Senior Superintending Engineer) against the sanctioned Group A Officers' positions and the advertisement to fill up one post of Senior Superintending Engineer, one post of Superintending Engineer and five posts of Executive Engineer, as a part of the mission mode recruitment drive.

40. We find that since Rule 6 of IIT Rules, 2018 empowers the Board of



Governors to permit the lateral entry of external candidates and the essential qualification was also provided under the Board's resolution dated 11.12.2022, wherein the essential qualification for the post of Executive Engineer was also laid down and in absence of any challenge to the same, no relief could be accorded to the appellants-petitioner. As in latin it says *Subla Fundamento cadit opus* i.e. A foundation being removed, the superstructure falls. Hence till the root cause is not struck down the consequential act cannot be washed away.

41. The Hon'ble Apex Court in **Dr. Thingujam Achouba Singh and others v. Dr. H.N. Nabachandra Singh and others**<sup>11</sup>, dealt with the issue, the relevant question is extracted hereunder ;

" In spite of the fact that in all the three writ petitions, advertisement dated 16.08.2016 inviting applications to fill up the post of Director was under challenge, and no challenge to the Rules and Regulations governing the recruitment to the post of Director was made; the High Court however has gone into the validity of recruitment Rules and recorded finding that Rules were not amended as per the Rules, Regulations and Bye Laws of the Society. Further, notification is quashed on the ground that after amendment to the Rules, such Rules were not notified to public at large, as such, they were not in the public domain. The High Court has also held that the experience criteria as prescribed by the Medical Council of India Regulations was not prescribed in the advertisement and such Regulations would have a binding effect, for filling up the post of Director in RIMS. Consequently, further direction is issued to the competent authority to consider providing relaxation in respect of upper age limit or the qualification as sought by the writ Petitioner therein."

The Hon'ble Apex Court, while testing the legality of challenge to the consequential order without any challenge to the validity of the Rules and Regulations, held;

"..... We are of the view that the High Court has committed, an error in going into the validity of the Rules, in absence of any challenge to the same. In any event, it was the case of the Respondent authorities that the Rules governing appointment were amended by following the Rules and such amendment was also approved by the competent authority, of Ministry of Health & Family Welfare. Further, the fact of not notifying the amended Rules has also been made basis for grant of relief by the High Court. In this regard, the High Court has held that not notifying the amended Rules would strike at the root of the amendment process of the recruitment rules, as such, unless such Rules are notified, the same cannot be enforced. It appears from the impugned order itself that it was the specific plea in the counter affidavit filed before the High Court that the said Rules were not framed Under Article 309 of the Constitution of India and further there is no specific provision in the Rules, Regulations and Bye-Laws of RIMS for notifying the same. It is true that in a public institution, Rules are required to be made available, but at the same time not notifying to public at large cannot be the ground to invalidate the notification, in the absence of any provision to that effect in the Bye-Laws of the Society or the Rules and Regulations framed for recruitment to the post of Director."

42. In **P.Chitranjan Menon & ors. Vs. A. Balakrishnan & ors.**<sup>12</sup>, the Hon'ble Supreme Court held that in absence of challenge to the basic order, subsequent consequential order cannot be challenged. The relevant para is reproduced as below:-

" 9 . While the earlier judgments were all decided against the respondents, the Kerala High Court in the judgment under appeal took a different view. The decision under appeal proceeds on the basis that a regrettable mistake crept into the judgment in O.P. No. 1431 of 1970 and the earlier decision proceeded on the basis that there was a III Grade mentioned in G.O. 814 dated 17th November, 1962. The High Court was of the view that there was a III Grade under the G.O. above referred to, the earlier decision missed the fact that these Grades were not applicable on 1st January, 1962. Though G.O. 814 of 1962 was not placed before us we are not sure whether there was any mistake in the earlier judgment for the G.O. MS 97/67 dated 11th March, 1967, refers to persons being transferred from the Malabar District Board as Panchayat Executive Officers III Grade. Be that as it may we are satisfied that the respondents are not entitled to the reliefs prayed for by them in the writ petitions. As the appellants were promoted to a higher post before the respondent were integrated into the Government Service on 1st January, 1962. Further throughout the appellants have been treated as occupying a higher post and respondents much lower post. Though the promotion of the appellants was before 1st January, 1962, and was confirmed by various orders of the Government the respondents herein did not choose to challenge the orders till the year 1974. In the circumstances, we are satisfied that the order of the Kerala High Court has to be set aside and the appeal is allowed with costs. "

43. **Roshan Lal & ors. Vs. International Airport Authority of India & ors.**<sup>13</sup>, wherein the petitions were primarily confined to the seniority list and the Apex Court held that challenge to appointment orders could not be entertained because of inordinate delay and in absence of the same, validity of consequential seniority cannot be examined. In such a case, a party is under a legal obligation to challenge the basic order and if and only if the same is found to be wrong, consequential orders may be examined.

44. The Hon'ble Supreme Court in **Edukanti Kistamma v. S. Venkatareddy**<sup>14</sup> held as follows:-

"12. It is a settled legal proposition that **challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained.** Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide **P. Chitharangja Menon v. A Balakrishnan** (1977) 3 SCC 255; **H.V. Pardasani v. Union of India** (1985) 2 SCC 46 and **Govt. of Maharashtra v. Deokar's Distillery** (2003) 3 SCC 669."

45. In the light of the discussions, as above and in absence of serious

12 AIR 1977 SC 1720

13 AIR 1981 SC 597

14 AIR 2010 SC 313

challenge to the Rules, 2018 and the Board of Governor's resolution dated 23.12.2022, we find that learned Single Judge has not erred in law to appreciate the belated attempt.

46. While considering the facts and law as elucidated above and relevant Rules/Regulations, which have been brought on record by the contesting respondents through the counter affidavit before learned Single Judge, we are of the opinion, that for the reason best known to the appellant-petitioner, there was no such challenge to the Rules/Regulations, which were duly adopted and enacted by the Competent Authority, therefore, the consequential recruitment process which was adopted by the employer/IIT Kanpur, cannot be held to be an arbitrary exercise which may warrant any interference in the intra court appeal.

#### **CONCLUSION**

47. In view of the facts and relevant authorities of Apex Court holding the field and in view of the discussion made above, we are of the considered opinion that there is no infirmity in the recruitment process adopted by the employee/IIT Kanpur.

48. In an Intra-Court Special Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. As such, we are not inclined to interfere with the impugned judgment and order dated 11.3.2024. The judgement and order of learned Single Judge dated 11.3.2024 dismissing the writ petition suffers from no error of law and same is upheld.

49. For reasons stated above, the Special Appeal is liable to be dismissed and stands, accordingly, dismissed.

**Order Date :-24.5.2024**  
RKP